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7	UN	NITED STATES OF	FAMERICA	
8	NATIO	NAL LABOR REL	ATIONS BOAI	KD
9		REGION 3	2	
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11	AMERICAN BAPTIST HOMES O	F THE WEST) Case No.	32-CA-25247 32-CA-25248
12	d/b/a PIEDMONT GARDENS,		,)	32-CA-25266 32-CA-25271
13	Respondent,			32-CA-25308 32-CA-25498
14	and		/)) SEII I II NIT '	ED HEALTHCARE
15	SERVICE EMPLOYEES INTERNA	TIONAL LINION		– WEST'S CROSS-
16	UNITED HEALTHCARE WORKER			RATIVE LAW
17	Charging Party.)))	ECISION
18))	
19) 	
20)	
21	SEIU, United Healthcare Workers – West (the "Union" or "UHW") takes the following			
22	cross-exceptions to the Administrative Law Judge's Decision issued on August 9, 2011 in the			
23	above-referenced case.			
24	Number Reference to Decision	Cross-Exception T	aken To:	
25	1. Page 4	The ALJ's finding	that "the parties	s bargaining which consumed
26		without an agreement	g sessions e ent."	ended on July 9, [2010]
27				
28 DGER &		35		
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1 2 3 4	2.	Page 11	The ALJ's finding and conclusion that "subsequent to the strike vote, given the language of the Union's poststrike authorization vote flyers, it appears that the bargaining unit employees were becoming increasingly perturbed over and frustrated with the on-going successor contract negotiations and what they perceived as Respondent's adamant and unacceptable positions on the economic and language issues"
	2	Dago 11 fp 21	
5 6	3.	Page 11, fn. 31	The ALJ's finding and conclusion that despite the fact that the heading of the strike ballot stated "unfair labor practice strike vote," that phrase which appeared at the top of the ballot "appear[s] to have been nothing more than union boilerplate
7			language."
8	4.	Page 11, fn. 31	The ALJ's finding and conclusion that "the <i>only</i> motivating factors underlying the bargaining unit employees' strike authorization vote" appeared to be "contract economic and
			language concerns." (Emphasis added).
10 11	5.	Page 13	The ALJ's finding and conclusion that Sanjanette Fowler, a member of the Union's bargaining committee, "conceded" that "a reason for the strike was the contract language."
12	6.	Page 14	
13	0.	Page 14	The ALJ's finding that Sheila Nelson and Sanjanette Fowler, who are both members of the Union's bargaining committee, "admitted [to] informing Board agents" that "the motivating
14			factor" for the strike was to put economic pressure on the employer.
15 16 17	7.	Page 14	The ALJ's reliance upon a hearsay statement of a striker – as material and relevant to whether or not the Union's strike was an unfair labor practice strike – which appeared in a local newspaper as the basis for the strike.
18	8.	Page 14	The ALJ's finding and conclusion that a letter from the Union,
19			dated August 6, 2010, to the mayor of Oakland, California is "[o]f critical import as to [the] motive" behind the Union's strike.
20	9.	Page 22	The ALJ's conclusion that he does "not believe that
21 22		- 3.60	Respondent's bargaining unit employees' August 2 through 7 strike constituted an unfair labor practice strike."
23	10.	Page 22	The ALJ's reliance upon – as material and relevant – the fact
24	10.	1 age 22	that on May 25, more than two months prior to the August 2 through 7 strike, the Union engaged in an information picket of
25			the employer.
26	11.	Page 22, fn. 47	The ALJ's finding and conclusion that despite the fact that the
27		1 450 22, III. T/	heading of the strike ballot stated "unfair labor practice strike vote," there is no significance to the use of that phrase or "the
28 ger &			use of said words on any document or strike placard."
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1	12.	Page 22	The ALJ's finding and conclusion that "in setting the strike
2	12.	1 age 22	authorization vote, the employees' bargaining committee identified successor contract bargaining issues as their
3			motivation."
4	13.	Page 22	The ALJ's finding and conclusion that "there is no record
5	13.	1 ugo 22	evidence regarding whether any bargaining unit employees, other than members of the bargaining committee, witnessed or
6 7			were cognizant of [the unfair labor practices] or as to the dissemination of information pertaining to them."
8	14.	Page 22	The ALJ's finding and conclusion that "the result of the strike
9			authorization vote was that the bargaining unit employees authorized their bargaining committee to call an economic strike against Respondent."
10	15.	Page 23	The ALJ's finding and conclusion that "there is no credible
11		J	evidence that, between July 9 and August 2, either Union agents or the eight members of the bargaining unit employees'
12			negotiating committee, ever informed Respondent's other bargaining unit employees that the economic strike, which they
13 14			had authorized their bargaining committee to call, had morphed into a strike to, at least, partially protest and redress their employer's unfair labor practices."
			employer's unrail labor practices.
15 16	16.	Page 23, fn. 50	The ALJ's failure to give credence to Sanjanette Fowler's response to a question from the Acting General Counsel on
17			redirect, despite the fact that the Respondent did not object to the form of the question.
18	17.	Page 23	The ALJ's finding and conclusion that "the Union published no
19		1 450 23	materials on the subject [of the employer's unfair labor practices]."
20			
21	18.	Page 23	The ALJ's finding and conclusion that although the Union bargaining committee met with bargaining unit employees, "the
22 23			subject of these meetings appears to have concerned procedural matters pertaining to each employee's participation in the strike[.]"
24			ourse[.]
25	19.	Page 23	The ALJ's finding and conclusion that he agrees with counsel for Respondent that the testimony of employees who made up
26			the Union's bargaining committee is no substitute for evidence that the general membership knew of, and were motivated to
27			strike because of, the unfair labor practices committed by Respondent.
28			
GER & D poration Parkway		TITI	- 3 - W's Cross Exceptions to Al I's Decision

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1 2	20.	Page 23	The ALJ's finding and conclusion that "bargaining unit employees authorized their negotiating committee to call a strike against Respondent for economic reasons."
3	21.	Page 23	The ALJ's finding and conclusion that the Union's bargaining
4			committee recommended that bargaining unit employees strike for economic reasons.
5	22.	Page 23	The ALJ's finding and conclusion that the "indisputable record
6 7			evidence herein is that the specific grounds, which were recommended to the bargaining unit employees for authorizing their negotiating committee to call a strike, concerned Respondent's bargaining positions."
8	•		respondent s bargaining positions.
9	23.	Page 23	The ALJ's finding and conclusion that "there is no record evidence that, other than the eight members of the negotiating
10 11			committee, the other 92 bargaining unit employees were aware of the acts, which constituted Respondent's unfair labor practices."
12			practices.
13	24.	Page 24	The ALJ's conclusion that, in his view, "given that the Respondent's unfair labor practices did not involve the
14			collective-bargaining process and are not of the so-called hallmark variety, the entire bargaining unit's lack of knowledge of them and lack of an opportunity to vote to confirm them as
15 16			rationale for the concerted work stoppage and strike left its original underlying economic rationale unchanged."
	25	Do 20 24	The ALD, who is the CE of the CONTROL of the CE of the C
17 18	25.	Page 24	The ALJ's misapplication of <i>Facet Enterprises</i> , 290 NLRB 152 (1988) to the facts of the instant matter.
19	26.	Page 24	The ALJ's finding and conclusion that the Union's bargaining
20			team "never informed their fellow unit members of Respondent's asserted unfair labor practices or the changed rational for their concerted work stoppage."
21			rational for their concertod work stoppage.
22	27.	Page 24	The ALJ's finding and conclusion that he is "not convinced that the bargaining committee actually was motivated by either
23			Pinto's unlawful surveillance or Reynolds unlawful evictions of employees in deciding to call for the August 2 through 7
24			concerted work stoppage and strike against Respondent."
25	28.	Page 24	The ALJ's finding and conclusion that Sheila Nelson was
26			impeached by her pre-trial affidavit.
27 28	29.	Page 24	The ALJ's finding and conclusion that Sanjanette Fowler was impeached by her pre-trial affidavit.
D rporation Parkway			- 4 -
1-1091		UH	IW's Cross-Exceptions to ALJ's Decision

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1 2	30.	Page 24	The ALJ's failure to consider whether or not bargaining unit employees were motivated to strike, in part, by the Respondent's unfair labor practices.
3		D 04	
4	31.	Page 24	The ALJ's finding and conclusion that Sanjanette Fowler told bargaining unit employees that "a reason for the strike was
5			contract language[,]" while conveniently ignoring the fact that Fowler and others told bargaining unit employees that a reason for the strike was to protest the employer's unfair labor
6			practices.
7	32.	Page 25	The ALJ's reliance upon hearsay statements made by one
8 9			striker to a local newspaper that "economic concerns, a minuscule raise offer and health insurance, were the strikers' issues" and reason for striking.
10	:		1000000 min 1010 mining.
11	33.	Page 25	The ALJ's finding and conclusion that the Union's August 6, 2010 letter to Oakland Mayor, Ronald Dellums, demonstrates
12			that the Union's reason for striking was grounded upon economic reasons, despite the fact that the letter references that the Union is calling an Unfair Labor Practice strike.
13			
14	34.	Page 25	The ALJ's finding and conclusion that "Respondent's bargaining unit employees voted to authorize their negotiating
15 16			committee to call an economic strike against Respondent and that such remained the entire underlying basis for the August 2 through August 7 concerted work stoppage and strike against
17			the Respondent."
18	35.	Pages 25-27	The ALJ's failure to conclude that the employer's decision to teach the Union and strikers a lesson and to replace them with
19			individuals, who in the event of future strikes would cross a picket line, was not an independent unlawful purpose for
20			permanently replacing the 38 bargaining unit employees.
21	36.	Pages 26-27	The ALJ's conclusion that Respondent's hiring of permanent replacements was not unlawful under the "independent"
22			unlawful purpose" exception as set forth by the Board in <i>Hot Shoppes, Inc.</i> , 146 NLRB 802 (1964).
23			
24	37.	Page 27	The ALJ's reliance upon <i>Choctaw Maid Farms</i> , 308 NLRB 521 (1992) for the proposition that the employer's state of mind
25			in hiring replacement workers is irrelevant.
26	38.	Pages 25-27	The ALJ's finding and conclusion that the employer "did not
27			violate Section[s] 8(a)(1) and 8(a)(3) of the Act by failing and refusing to reinstate 25 of its bargaining unit employees and
28 WEINBERG, ROGER & ROSENFELD			belatedly reinstating 13" bargaining unit employees.
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1	39.	Pages 29-31	The ALJ's failure to recommend that the employer reinstate the 38 bargaining unit employees that were permanently replaced		
3			and/or to make them whole for any loss of earnings or other benefits suffered as a result of the employer's unlawful discrimination against them.		
4					
5	40.	Page 31	The ALJ's recommendation to dismiss the complaint allegations that the employer violated Sections (8)(1) and (3) of		
6			the Act by belatedly reinstating or refusing to reinstate former striking employees.		
7					
8	Data di O	-4-h19 2011			
9	Dated: October 18, 2011		WEINBERG, ROGER & ROSENFELD		
10			A Professional Corporation		
11			By: Bruce A. Harland		
12			Attorneys for Charging Party SEIU, United Healthcare Workers – West		
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PROOF OF SERVICE (CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court. at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On October 18, 2011, I served the following documents in the manner described below:

SEIU, UNITED HEALTHCARE WORKERS – WEST'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION; and SEIU, UNITED HEALTHCARE WORKERS – WEST'S BRIEF IN SUPPORT OF CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

- V (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- $\overline{\mathbf{A}}$ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

On the following part(ies) in this action:

Mr. William Baudler	David S. Durham
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I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct. Executed on October 18/2011 Jameda, California.

Rhonda Fortier-Bourne

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Proof of Servic e Case No. 32-CA-25247, et al.